

REMARKS

The purpose of this amendment is to rejoin claims that were subject to restriction, pursuant to MPEP 821.04 and 821.04(a) and the indications in the Office action of May 4, 2006 (middle of page 3) regarding the permissibility of rejoinder in certain circumstances, which circumstances are now believed to prevail in this application.

Examiner Hartley's courtesy in conducting a telephone interview with the undersigned on January 18, 2007 to advance the prosecution of this application is appreciated by applicant as is the assistance of Examiner Hartley.

New Claims

In this amendment, new claims 50-53 are added. Claims 50-53 correspond with claims 24, 26, 41 and 43, respectively, which were withdrawn from consideration in the Office action of June 29, 2006 and subsequently cancelled by applicant, without prejudice.

Claim 50 depends from allowed claim 23 and is drawn to a process for preparing an oil-in-water emulsion which provides a foodstuff.

Claim 51 is drawn to the foodstuff product of the method of claim 50.

Claim 52 depends from allowed claim 23 and is drawn to a process for preparing an oil-in-water emulsion which provides a cosmetic product.

Claim 53 is drawn to the cosmetic product of the method of claim 52.

Thus, all of new claims 50-53 depend either directly or indirectly from an allowable claim, claim 23. Furthermore, the processes for preparing foodstuffs and cosmetics products set forth in claims 50 and 51, respectively, and the products of these processes defined in claims 52 and 53, respectively, are distinct species of the genus defined by claim 23, which is drawn to a process of preparing an oil-in-water emulsion. A further species, the preparation of a pharmaceutical product and the product prepared, was elected for prosecution by applicant in the

paper filed 5 June 2006 and is claimed in allowed claims 25 and 42.

In summary, the present amendment serves to rejoin four dependent claims defining two additional species of an invention claimed in an allowed generic claim, after the dependent claims in the application were restricted to a single species for examination purposes. The restriction requirement has been withdrawn in the Notice of Allowability mailed January 29, 2007. Rejoinder is therefore believed proper and is respectfully requested.

Request for Entry

Entry of this amendment is respectfully requested, and is believed proper, for the reasons set forth below, where each of the issues raised in MPEP 714.16 is addressed, using the same reference labels (A) – (D) as are employed in the MPEP.

(A) Need for Amendment. As explained herein, claims 50-53 define embodiments of applicant's invention claimed generically in claim 23, which embodiments are additional to those defined in the allowed claims. New claims 50-53 are needed for proper protection of applicant's invention as it extends to foodstuff and cosmetic product embodiments.

(B) No Need for Additional Search and Examination. As indicated in the Notice of Allowability, under the heading "Election/Restrictions", the examiner already has conducted a search on the non-elected material so that there is clearly no need for further search. In light of this circumstance and the reason for patentability indicated below, further examination does not appear to be necessary either.

(C) Patentability. Claims 50-53 each depend either directly or indirectly from allowed claim 23 and therefore include all the limitations of allowed claim 23. Accordingly, claims 50-53 are believed patentable for the reasons that claim 23 was found patentable, and furthermore for the subject matter they recite.

(D) New Claims Could Not Be Presented Earlier. Claims 50-53 could not be presented for rejoinder at an earlier time because some, if not all, the claims to the elected invention must

be in condition for allowance for a claim to be eligible for rejoinder. (See MPEP 821.04.) Prior to the Notice of Allowance mailed January 29, 2007 and the telephone interview on January 18, 2007, no claim was in condition for allowance. Thus rejoinder was not possible, applicant believes. This request for amendment and rejoinder is being filed promptly after receipt of the Notice of Allowance.

If for any reason the Examiner feels that consultation with Applicant's representative would be helpful in advancing this request, the Examiner is invited to call the undersigned practitioner below for an interview.

Respectfully submitted,

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